IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 21/2006

1) Shri Gokuldas Rama Gaude,
of major age, residing at
House No.61/1, Sonshi,
Post Honda, Sattari, Goa.

2) Shri Bhanu Rama Gaude,
residing at House No.61/1,
Sonshi, Post Honda, Sattari, Goa.

3) Smt. Meena Bhanu Gaude,
residing at House No.61/1,
Sonshi, Post Honda, Sattari, Goa.

4) Shri Ashok Rama Gaude,
residing at House No.61/1,
Sonshi, Post Honda, Sattari, Goa. ..... Applicants.

V/s.

M/s. V. G Quenim,
A proprietory concern of
Shri Vassudev Guiri Quenim,
of major age, residing at Miramar,
Panaji, Goa. ..... Respondents.

Mr. S. D. Lotlikar, Sr. Advocate with Mr. M. D'Souza, Advocate for the applicants.

Mr. V. B. Nadkarni, Senior Advocate with Mr. J. Cardozo, Advocate for the respondents.

CORMA : S.K. SHAH, J.

DATE : 15TH FEBRUARY, 2007

ORAL JUDGMENT :

Heard learned Counsel on both sides. By consent of the learned Counsel for the parties, this revision application is taken up for final disposal.

2. This revision challenges the order passed by the Civil Judge, Sr. Division, Bicholim in Execution Application No. 3/05/A whereby the objection to the execution of the decree was raised. The respondents obtained the decree of specific performance of the agreement dated 5.7.1996. By this decree, the applicants herein are directed to execute the sale deed in favour of the respondents in respect of the land bearing Survey No.50/1 of Village Sonus Vonvoliem.

3. The un-disputed facts are that by Conveyance dated 6.10.1995, the suit land was purchased by the applicants from the original landlord. It is, thereafter, that they entered into the suit agreement of sale with the respondent for selling the suit property for consideration. Eventually, the decree was passed against the applicants. That decree has become final It

is, thereafter, that the execution application was filed by the respondents for executing the decree. It is in that execution application, that the applicants filed an application raising objection that the decree cannot be executed. The main grounds were that the land was an agricultural land; that the father of the applicants was the tenant of the land and thereafter, had become the deemed tenant by virtue of the provisions of Section 18-A of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 on the tillers day i.e. 24th April, 1976. On these grounds, it was objected that the decree cannot be executed.

4. The learned Civil Judge, Sr. Division, Bicholim rejected this application, holding that the applicants were not the tenants and, therefore, the provisions of the Agricultural Tenancy Act were not attracted.

5. The learned Counsel for the applicants submitted that it has been mentioned in the conveyance deed under which they purchased the suit property from the original landlord that the father of the applicants had agreed to purchase the suit land in the name of the applicants and that the purchasers are deemed owners of the property in terms of Agricultural Tenancy Act, 1964. It is, therefore, vehemently submitted on behalf of the applicants that the provisions of the Tenancy Act are attracted to the

present case. He further submits that by virtue of the provisions of Section 18-K, the land is not transferable without the prior permission of the Mamlatar and no permission was obtained. It is also the contention raised on behalf of the applicants that the land is an agricultural land and being so, the provisions of the Agricultural Tenancy Act, 1964 are attracted and the land cannot be permitted to be used for non-agricultural purpose.

6. The learned Counsel for the respondents has contended that the provisions of the Agricultural Tenancy Act are not attracted at all as the applicants were never been the tenants. He also submits that the father of the applicants was also not a tenant although there was a reference made in the conveyance deed to that effect. He further points out that the said aspect was considered by the High Court in First Appeal No. 66/04, wherein it was specifically held that the applicants (defendants) having agreed to sell all the four properties, including the suit property and having sold three of them, the applicants cannot be allowed to say that the fourth property could not be sold by them because it could not be used otherwise than for agricultural purpose. He, therefore, contends that no interference is called for in the order passed by the executing Court.

7. It is totally misplaced on the part of the applicants to say that

the present case is governed by the provisions of the Agricultural Tenancy Act, 1964. This is so because the applicants were never tenants of the agricultural land. It is clear position that the father of the applicants also never applied for getting the certificate for having purchased the suit property under Section 18-A of the Agricultural Tenancy Act. It is to be noted that the father of the applicants was alive when the conveyance deed was passed by the landlord in favour of the applicants in 1995. The father of the applicants could have been deemed tenant right from 1976. Right from 1976 till 1995 when the conveyance was passed in favour of the applicants, no such claim of the applicant's father as deemed purchaser of the property was ever made nor the certificate to that effect was ever obtained. Therefore, basically, the provisions of the Agricultural Tenancy Act are not attracted to the facts of the present case.

8. The contention that the land was agricultural land and, therefore, it cannot be allowed to be used for non-agricultural purpose, this ground cannot be raised at this stage. So far as the use of the agricultural land is concerned, the respondents can apply to the Mamlatdar for conversion of the use of the agricultural land for non-agricultural purpose and that aspect can be considered by the Mamlatdar. However, that cannot prevent the execution of the decree which is obtained by the respondents.

9. It was also submitted by the learned Counsel for the applicants that in the written statement it was brought to the notice of the Court that the land was agricultural land and, therefore, it ceases to have jurisdiction. However, this contention is also not to be accepted. This is mainly because there was never a plea that the applicants were the tenants of the agricultural land. That there being no such plea having been taken, there was no question of the issue having been framed in that regard, and on that basis, it was submitted that the Civil Court could not have decided the issue as to the tenancy. Even for that matter, there was no plea taken by the applicants in their written statement that the Civil Court had no jurisdiction.

10. It is obvious that the transaction of sale of the suit land was between the applicants and the respondents and the respondents having obtained the decree of specific performance against the applicants, the applicants are bound to execute the same. The objections raised for execution of the decree are totally misplaced and devoid of any merits. The learned executing Court rightly rejected the application made by the applicants.

11. Consequently, I do not find any merit in the revision application. The revision application is, therefore, dismissed.

S. K. SHAH, J.

ssm.